



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**JOHN BEN SHEPPERD  
ATTORNEY GENERAL**

September 6, 1955

Honorable Robert S. Calvert  
Comptroller of Public Accounts  
Austin, Texas

Letter Opinion No. MS-235

Re: Classification of certain  
Texas Employment Com-  
mission fund accounts.

Dear Mr. Calvert:

You have requested the opinion of this office upon two points:

"(1) Has there been any change in the Texas Unemployment Compensation Act that would change the opinion of the Attorney General to construe the Unemployment Compensation Funds provided for under Act 5221b-7 Section 9(a) and (b) VCS, to be State Funds in the State Treasury, instead of Trust Funds, with the State Treasury?

"If you answer the above in the negative, please answer question No. 2 which is as follows:

"(2) Can the Treasurer and Comptroller by a book-keeping entry reclassify the Unemployment Compensation Clearance Fund 29, the Unemployment Compensation Benefit Fund 87, and the TUCC Trust Fund 145, from State Funds, in the State Treasury, to Trust and Suspense funds, with the State Treasury, without violating the constitutional provision, Article 8, Section 6, which reads in part as follows:

"No money shall be drawn from the Treasury but in pursuance of specific appropriations made by law."

It is assumed your first question refers to Attorney General's Opinion No. 0-3607 approved August 15, 1941. That opinion is to the effect that moneys in the three separate accounts maintained in the Unemployment Compensation Fund are not the property of the State but constitute a Trust Fund to be held out of the State Treasury though in the hands of the State Treasurer as trustee. We have carefully re-examined that opinion and we hereby reaffirm it. The Legislature has made no change in the Texas Unemployment Compensation Act, Ch. 482, Gen. and Spec. Laws of Texas, 44th Legislature, Third Called Session, 1936, as amended,

which would change the basis upon which that opinion is predicated. We therefore answer your first question in the negative.

You have also directed our attention to Attorney General's Opinion No. 0-44 approved April 11, 1939. We likewise reaffirm that opinion, which is to the effect that the Comptroller of Public Accounts was not authorized to correct an error in bookkeeping whereby certain moneys were erroneously placed in the General Revenue Fund instead of into the Suspense Fund, except upon specific direction by the Legislature. This does not mean, however, that you may not legally reclassify the three separate accounts in the Unemployment Compensation Fund, which are the subject of your request for our opinion. On the contrary, it is our opinion that you may so reclassify the accounts by virtue of and in pursuance of specific appropriation made by the 54th Legislature. The specific appropriation to which we have reference is contained in the latest Biennial Appropriation Act, H. B. No. 140, Ch. 519, Acts of the 54th Legislature, Regular Session. It is therein provided:

"All moneys . . . which are now on deposit to the credit of any funds maintained by the State Treasurer for the Texas Employment Commission and any moneys received for the credit of such funds are hereby appropriated for the purposes authorized by the provisions of the Texas Unemployment Compensation Act. . . ."

The language just quoted is an appropriation in terms of the provisions of the Texas Unemployment Compensation Act which govern the Unemployment Compensation Fund. And these provisions themselves direct the action which you contemplate; to wit: the establishment "as a special fund, separate and apart from all public moneys or funds of this State, an Unemployment Compensation Fund . . . The State Treasurer shall be the Treasurer and custodian of the fund. . . The Treasurer shall maintain within the fund three (3) separate accounts: (1) a clearing account, (2) an unemployment trust fund account, and (3) a benefit account. . . ." Subsections 9(a) and 9(b), Texas Unemployment Compensation Act, Ch. 482, Laws 44th Legislature, Third Called Session, 1936, as amended; Articles 5221b-7(a) and 7(b), V.C.S.

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Your second question is therefore answered in the affirmative.

Yours very truly,

APPROVED:

JOHN BEN SHEPPERD  
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Reviewer

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